

Appn. No.: 10/823,369
Amendment Dated October 9, 2006
Response to Office Action Dated August 11, 2006

BBM-142US1

Remarks:

Claims 1-21, 23-28 and 31-37 are pending in the application. In the Office Action dated August 11, 2006, claims 32-37 were rejected under 35 U.S.C. § 112 as being allegedly indefinite. Claims 1-4, 6, 9-14, 16-21, 23, 27, 28 and 31 were rejected under 35 U.S.C. § 102(b) on the ground that they are anticipated by U.S. Patent No. 5,964,760 ("Richelsoph"). Claims 5, 7, 8, 15, 24 and 25 were rejected under 35 U.S.C. § 103(a) on the ground that they are unpatentable over Richelsoph in view of U.S. Patent No. 5,520,689 ("Schlapfer et al."). Claim 26 was deemed allowable.

Based on the foregoing amendments and the following remarks, Applicant respectfully submits that the rejections set forth in the Office Action are traversed.

Claim Rejections – 35 U.S.C. § 112

Applicant respectfully submits that the subject matter of claims 32-37 is clearly conveyed in the written description, including both the specification and drawing figures. The specification notes that "substantially tubular body 40 can be segmented so portions of the substantially tubular body 40 can be snapped off." (Spec. p. 16, lines 5-7). The specification further states:

"the fixing mechanism 18' includes a pair of spaced, substantially parallel arms 42 extending from the substantially tubular body 40'. These arms 42, as shown in Figure 2, can be optionally snapped-off from the substantially tubular body 40' after assembly of the screw fixation assembly 10' is completed." (Spec. p. 17, lines 25-29).

Figure 2 shows the arms 42 with thinned sections which clearly reflect what is being described in the passage on page 17 of the specification. Therefore, the language "each arm portion comprising a thinned section adapted to break" is clearly described in the specification and drawings, and is not new matter. Accordingly, Applicant respectfully requests withdrawal of this rejection and favorable consideration of claims 32-37.

Claim Rejections – 35 U.S.C. § 102 and § 103

Before addressing the cited references, it may be helpful to review portions of Applicant's specification. Applicant's fixation assembly is advantageous in that it utilizes smaller sized components inside the fixation mechanism to reduce the overall diameter and bulkiness of the assembly, while more securely engaging the rod. (Spec., p. 10, lines 11-23).

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For example, Applicant's assembly may utilize a rod seating mechanism inside the fixation mechanism to directly engage and compress the rod. (Spec. p. 14, lines 15-28). The fixation assemblies in Richelsoph and Schlapfer focus on different objectives, and do not include these features.

To clarify the above-noted distinctions, Applicant has amended claim 1 to recite a rod fixation assembly having a rod seat disposed inside the inner passageway of the fixing mechanism and having a U-shaped inner wall for seating a rod therein, said rod seat including at least one flexible portion capable of being compressed against a rod seated within said rod seat, wherein said at least one flexible portion has a tapered outer surface end, and locking means disposed inside the inner passageway of the fixing mechanism and engaging the rod and rod seat, said locking means including a deflecting surface for deflecting said at least one flexible portion of said rod seat against and around the rod as said locking means further engages said at least one flexible portion of said rod seat. Support for the amendment is provided in the specification and drawings, including but not limited to page 14 lines 15-28, page 20 lines 12-21, and Figs. 10-12B, among other sections. No new matter has been added.

Richelsoph does not teach or suggest the use of a rod seat disposed inside the inner passageway of the fixing mechanism and having a U-shaped inner wall for compressing against a rod seated therein, as described in amended claim 1. Instead, Richelsoph discloses a fixation assembly that secures to a rod by means of a locking nut 22 placed around the outside of the fixation assembly (See, e.g., Fig. 4). The only component inserted into the fixation mechanism is the insert 70, but the insert 70 attaches to the screw head, not the rod. Schlapfer also fails to teach or suggest the use of a rod seat disposed inside the inner passageway of the fixing mechanism as described in amended claim 1. The rod 5 is supported directly in the U-shaped channel 4 of the fixing mechanism 3, and there is no seat that deflects in response to locking means. Therefore, Applicant respectfully submits that claim 1 is not anticipated or rendered obvious in view of Richelsoph or Schlapfer.

Claims 2-8 are dependent on claim 1 and incorporate all the features recited in claim 1. Therefore, claims 2-8 are believed to be allowable over the cited references for at least the same reasons that claim 1 is allowable.

Applicant has elected to cancel claims 9-21, 23-28 and 31 without prejudice. Applicant reserves the right to pursue one or more of the cancelled claims in a subsequent application.

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New Claims

Applicant is submitting new claims 38-41, the subject matter of which is neither taught nor suggested by any of the cited references. Claims 38-40 are directed to rod fixation assemblies comprising a fixing mechanism having a substantially tubular body with an inner passageway and inner wall surrounding the inner passageway, a rod seat inserted into the inner passageway, the rod seat having a pair of flexible portions extending generally parallel to one another forming a U-shaped inner surface adapted for seating a rod between the flexible portions, the flexible portions being deflectable radially inwardly toward one another to compress against and around the exterior of a rod. Support for new claims 38-40 is found in sections of Applicant's specification and drawings, including but not limited to page 14 lines 15-28, page 20 lines 12-21, and Figs. 10-12B, among other sections. No new matter has been added.

Claim 41 is directed to a fixing mechanism for a rod fixation assembly comprising a substantially tubular body having a gripping portion and a pair of arm portions extending from the gripping portion in a substantially parallel arrangement, the arm portions being separated from one another by an interior passageway extending along a portion of the tubular body, said passageway adapted to receive a rod securing fastener, the tubular body having an inner surface with inwardly-facing threads, the inwardly-facing threads being adapted to engage and axially advance a rod securing fastener that is inserted in the passageway, each arm portion being segmented into portions adapted to be snapped-off from the substantially tubular body. Support for new claim 41 is found in sections of Applicant's specification and drawings, including but not limited to page 16, lines 5-7, page 17 lines 8-29, and Fig. 2, among other sections. No new matter has been added.

Conclusions

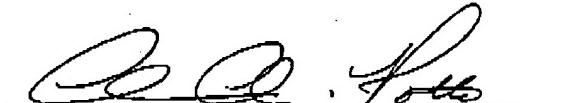
Based on the foregoing amendments and remarks, Applicant respectfully submits that the claim rejections set forth in the last Office Action have been traversed. Applicant further requests consideration of new claims 38-41, which are believed to be allowable over the cited references.

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Applicant believes that the application is in form for allowance, and requests such action at this time. If the Examiner believes there are any outstanding issues precluding allowance, the Examiner is encouraged to contact the undersigned at 610-407-0700.

Respectfully submitted,



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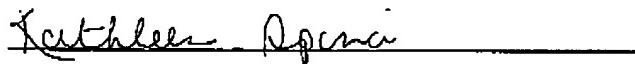
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I hereby certify that this correspondence is being deposited with the United States Postal VIA FACSIMILE to 571-273-8300, addressed to: Mail Stop RCE, Commissioner for Patents, on: October 9, 2006



Kathleen Spina